

Plenary Presentation

4.4 THE NETHERLANDS: CIVIL CLAIMS, COMPENSATION BOARDS AND GOVERNMENT AWARDS

BOB RUERS

The first organized action of factory workers in the Netherlands against asbestos exposure dates from 1976. In 1976, the factory workers of the Eternit asbestos cement factory protested against their exposure to asbestos in the factory. They had to work without any real protection from exposure to asbestos. The safety measures of Eternit were in fact non-existent. With the help of the local Union they documented their working conditions in a black book and they demanded a far-reaching improvement of their working conditions. Of course, Eternit denied all the allegations and finally broke the resistance of the workers. All the workers who had led the protest were dismissed!

However, twenty years later the Union black book would be of great importance in legal proceedings against Eternit. In these proceedings the book would be proof of the hazardous working conditions of Eternit workers in the Seventies.

A few years after the 1976 protest, the Socialist Party took the initiative in a new campaign against the use of asbestos and for the introduction of safe working conditions. In the first instance, action was aimed at the Eternit asbestos cement factory. In 1988, the first breakthrough was realized. On behalf of three surviving relatives, i.e. widows of former Eternit workers who had died because of asbestos diseases, the Socialist Party sued Eternit. After a two-year fight they won.

After that success we initiated many legal proceedings. In almost all these proceedings the claims of the asbestos victims were awarded. Finally, Eternit recognized its faults and nowadays no longer disputes its liabilities for factory workers, former workers and their surviving relatives.

These successes against Eternit attracted a lot of attention in the media; more and more victims decided to sue their employer or former employer. In doing so, they took advantage of Supreme Court case law developments since 1990, favouring asbestos victims. Accordingly, since 1990 the majority of the legal proceedings of asbestos victims against their employer was successful.

By the end of 1994, these developments motivated the Socialist Party to organize all the asbestos victims in the Netherlands (up to that time we had seen only legal proceedings by individual asbestos victims against the employer). So in 1995, the Committee of Asbestos Victims was founded by the Socialist Party. This committee very soon was a big success. Within a couple of months, more than a hundred asbestos victims reported to the committee. Again there was a lot of attention in the media. It was also very important that the Committee of Asbestos Victims got strong support from the trade unions. It also obtained lots of sympathy and support from family doctors, lung specialists and university scientists.

The aim of the Committee of Asbestos Victims is twofold. In the first place the shortening of the so-called "legal agony of mesothelioma victims", and in the second place the establishment of a national asbestos fund. To achieve that goal the committee, whose members comprise only asbestos victims or their relatives, started consultations with employer's organizations, insurance companies, the government and the trade unions. At the same time the committee supported legal

proceedings against employers on a large scale, mostly successfully.

Scientific research has revealed that there are about three hundred victims of mesothelioma a year in the Netherlands. According to reports from university scientists, the number of Dutch mesothelioma deaths will continue to increase: from three hundred per year now to more than six hundred per year in 2018. Since the formation of the Committee of Asbestos Victims in 1995, about 250 victims and their relatives per year come to the committee for information, help and legal advice. Many legal proceedings were initiated. Frequently, interim injunction proceedings were brought against the employer on behalf of asbestos victims, mostly successfully.

With lobbying and campaigning on the one hand and legal proceedings on the other, the Committee of Asbestos Victims kept on pressuring the employers and the government. Finally, this led to the creation of the Institute of Asbestos Victims (IAV). Asbestos victims entitled to apply to the IAV are limited to mesothelioma patients with traceable employers, whose exposure occurred within the thirty-year limitation period. The IAV aims to resolve claims within four months. To bring a claim before the IAV, individuals must renounce the right to bring a civil action. However, the IAV is incapable of dealing with all Holland's asbestos victims, as its rules bar asbestosis, lung cancer and the mesothelioma patients whose exposure took place more than thirty years ago.

Another important aspect of the IAV is the fact that the institute doesn't charge the employee for its work. The employer pays the institute a flat rate to meet its mediating costs, unless it is shown that the employer was not negligent in his duty to care for the health of the employees.

If it can be shown that the employer was negligent in his duty to care for the health of the employee, the institute will mediate to agree a financial settlement as compensation. The compensation is based on standardized rates. On the basis of the institute's covenant, an employee with mesothelioma is entitled to a settlement of NLG 100,000 from the employer, provided all conditions are met. This amount is made up of NLG 90,000 emotional damages, NLG 5,000 material damages to surviving relatives and NLG 5,000 to cover remaining material damages. The latter two awards may be higher if the employee can show that the actual damage is indeed higher. These standardized rates are index-linked.

The founding of the IAV was a great success for the Committee of Asbestos Victims and strengthened the position of asbestos victims. Moreover, the committee managed at the same time, through pressuring the government and using the influence of the Socialist Party in parliament, to found a supplementary statutory body, the Government Asbestos Institute (GAI), which administers a national compensation scheme.

However, there are huge discrepancies in the levels of compensation available from the two sources; with average settlements of NLG 100,000 being awarded by the IAV and NLG 35,000 by the GAI. The GAI also covers those mesothelioma patients who can't claim compensation from their employers, because the exposure took place more than thirty years ago or because their employers don't exist anymore. For these asbestos victims the award by the GAI is also NLG 35,000.

Although the Committee of Asbestos Victims is pleased with the founding of the Institute of Asbestos Victims and the Government Asbestos Institute, the committee is not fully satisfied yet, because not all asbestos victims are entitled to claim compensation. So the committee keeps on fighting for an improved basis of compensation from the Government Asbestos Institute.

In addition, the committee doesn't accept the IAV and GAI policy of excluding asbestosis and lung cancer patients. Regarding the IAV, the Committee of Asbestos Victims is negotiating with employers and insurance companies to extend its scope. It is expected that, within a certain period of time, asbestosis patients will also be able to apply to the IAV for compensation.

During the last decade, asbestos victims got much support and cooperation from Dutch lung specialists, university scientists and the Health Council of the Netherlands. The Health Council is the most important advisory body of the government. It reported to the government in 1998 about mesothelioma and in 1999 about asbestosis. These reports of the Health Council provide support for asbestos victims. A report of the Council concerning lung cancer and asbestos is expected by the end of 2001.

At the same time, the Dutch Mesothelioma Panel is playing an important role in the medical discussion. In this panel, five pathologists specializing in the diagnosis of mesothelioma are working together. The panel is widely recognized and also plays a very important role in the Institute of Asbestos Victims. All the medical files of the mesothelioma patients who apply to the IAV are assessed by the mesothelioma panel. With regard to the IAV and the GAI the opinion of the panel is decisive. It is obvious that the contribution of the panel is beneficial to the performance of the IAV.

So, in only five years, the Committee of Asbestos Victims has achieved a substantial position in the Netherlands, recognized by friend and foe. However, the Committee of Asbestos Victims realizes all too well that the fight must go on. It is true that the committee has achieved a lot, but there is still much to do. Especially if we think about the huge number of asbestos victims still to come in the next thirty years.

The founding of the Committee of Asbestos Victims proves that victims, well organized, militant and persistent, can achieve a great deal in a rather short period of time. And what's more, one should not forget that the members of the Dutch Committee of Asbestos Victims are all volunteers, mostly surviving relatives of asbestos victims. They know from their own experience what they are speaking about and what they are fighting for. Besides, of course, the organizational and financial support of the Socialist Party has proven to be an important factor in their success.